



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278*

December 20, 2024

By ECF

The Honorable Sidney H. Stein
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: *United States v. Robert Menendez, Wael Hana, and Fred Daibes,*
S4 23 Cr. 490 (SHS)**

Dear Judge Stein:

The Government respectfully writes in the above-captioned matter to correct one factual error in the Government's December 16, 2024 letter notifying the Court of the Chat Exhibits (Dkt. 655).¹ The Government late last night identified that one of the Chat Exhibits that had been described in the letter as uncited, Government Exhibit D207—which, as the Government noted, was not mentioned before the jury at all—was cited in the applicable summary chart (Government Exhibit 1302).² This citation, for the proposition that Wael Hana texted Fred Daibes a mortgage payoff statement, was not the subject of any emphasis or dispute at trial. (*See* Government Exhibit

¹ The terminology used in this letter is consistent with that used in the Government's December 16, 2024 letter (Dkt. 655) and its opposition to the defendants' supplemental post-trial motions (Dkt. 648).

² The Government overlooked this citation in preparing the December 16 letter due to a technical malfunction affecting the text-searchability of the Government's copy of Government Exhibit 1302, which apparently only rendered certain portions—and not the portion containing this citation—text searchable. Since discovering this citation on December 19, the Government has used optical character recognition software to re-run its searches on the admitted version of Government Exhibit 1302, and has also performed searches on the Excel file on which that admitted version was based, and has not found any other citations to any of the Chat Exhibits.

Honorable Sidney H. Stein

December 20, 2024

Page 2

1302 row 986).³ The text message reflected in this entry appeared on page 1 of the 51-page Government Exhibit D207, whereas the excluded matter was on page 10, and concerned matters almost two months after the text message for which Government Exhibit D207 was cited. Therefore, if the jury had chanced to inspect the citation—which for all the reasons in the Government’s prior filings there is no reasonable likelihood it would have—there is still no reasonable possibility that the jury would have seen any excluded matter.

Accordingly, although the Government now believes that Government Exhibit D207 is more akin to Government Exhibit C603 (the Missed Call Chat Exhibits) than to Government Exhibits B207 or C207 (the other Uncited Chat Exhibits), the Government does not believe this error affects the substance of any of the arguments made in the Government’s December 16, 2024 letter, and writes this letter solely to correct above-described factual statement.⁴

³ The Government’s summary witness testified briefly about, and the Government showed the jury, the row of the summary chart and the payoff statement itself (which was a separate, separately numbered, and properly admitted exhibit), but never showed or referenced Government Exhibit D207 (*i.e.*, the exhibit with the excluded matter), which was cited only to show the date and time Hana sent the payoff statement to Daibes. (*See* Tr. 1438:17-1440:9.) This row, or indeed Hana’s sending Daibes the payoff statement, was not mentioned in any party’s jury addresses.

⁴ The Government also notified the defense today that, this morning, it identified that an earlier version of the translation of Government Exhibit C107-AT, and not the final translation previously stipulated to by the parties, was included in the admitted exhibit set circulated to defense on July 10 in advance of the preparation of the laptop, and then loaded onto the jury’s laptop. The Government does not believe that the differences between these translations, which do not implicate the Speech or Debate Clause or any of the Court’s rulings and were not noticed by any counsel when reviewing the exhibit set or the laptop, could have possibly caused any prejudice to any defendant even if seen.

Honorable Sidney H. Stein
December 20, 2024
Page 3

Respectfully submitted,

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Acting Under Authority Conferred by
28 U.S.C. § 515

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